

REMARKS

Favorable reconsideration of this application as currently amended, and in view of the following remarks, is respectfully requested.

After entry of the foregoing amendment, Claims 1-24 remain pending in the present application. Claims 1, 23 and 24 have been amended to clarify features of Figure 34. No new matter has been added.

By way of summary, the Official Action presents the following issues: the IDS filing of March 15, 2005, has not been considered; Claim 23 stands rejected under 35 U.S.C. § 101; and Claims 1-24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Goldman (U.S. Patent Publication No. 2002/0112239, hereinafter Goldman) in view of Ellis et al. (U.S. Patent Publication 2003/0020744, hereinafter “Ellis”).

Information Disclosure Statement

The Official Action has again indicated the IDS filed March 15, 2005, is not in compliance with 37 C.F.R. § 1.97 and 1.98. As previously pointed out, MPEP § 609, states:

Where the information listed is not in the English language, but was cited in a search report or other action by foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office. This may be an explanation of which portion of the reference is particularly relevant, to which claims it applies, or merely and “X”, “Y”, or “A” indication on a search report.¹ (emphasis added)

Applicants note that a corresponding International Search Report was filed along with the IDS of March 15, 2005 indicating the relevance of the listed references as either “X”, “Y” or “A.”

¹ MPEP § 609, page 600-129.

In response to the above clarification, the Office has stated in the most recent Action that:

... since the reference provided in the IDS is not in English translation, it is not a legible copy.

It appears as though the Office is now taking the position that “legibility” has something to do with the underlying language of the document. Of course, this is not the case, legibility refers to the quality of the printing. Nonetheless, based on this misunderstanding, in an attempt to advance prosecution, Applicants submit herewith a concurrently filed Petition for supervisory review.

Accordingly, Applicants respectfully submit that the references cited in the IDS of March 15, 2005 are required to be considered, and the Director has been petitioned to instruct the Examiner to indicate consideration thereof, in the next communication.²

Rejection Under 35 U.S.C. § 101

Additionally, Applicants pointed out that Claim 23 was amended in compliance with MPEP 2106.01. Still, the Office has maintained the rejection of this claim. Applicants respectfully traverse the rejection.

Confusingly, the Office identifies MPEP 2106.01 as stating that:

... a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structures functionality to be realized, and is thus statutory. (emphasis added)

² Additionally, it is noted that the Office appears to be requesting an admission relative to the references of the International Search Report (as expressed at page 3 of the Official Action). It is unclear what if anything this has to do with the lack of consideration of this properly submitted IDS. Moreover, Applicants point out that the mere listing of the reference in an Information Disclosure Statement is not taken as an admission that the reference is prior art against the claims. See 37 C.F.R. § 1.97(h).

Yet at the top of page 4, the Office appears to overrule this portion of the MPEP and, somehow, attempts to disagree with it. Simply stated, MPEP 2106.01 states that a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships. In other words, the instructions of the medium are accessed by a computer for executing the data structures of the medium. Thus, the interrelationships, by the very nature of this claim, are very clearly recited, and are well established as statutory. In an attempt to further clarify the above, Claim 23 is amended in this regard.

Accordingly, Applicants respectfully request that the rejection of Claim 23 under 35 U.S.C. § 101 be withdrawn.

Rejection Under 35 U.S.C. § 103

The Official Action has rejected Claims 1-24 under 35 U.S.C. § 103 as being unpatentable over Goldman in view of Ellis. The Official Action states that the combination of Goldman and Ellis describe all of the Applicants claimed features. Applicants respectfully traverse the rejection.

Applicants' amended Claim 1 recites, *inter alia*, a data processing apparatus that performs data processing to generate an EPG (electronic program guide) to be displayed on a display, including:

... EPG generating means for generating an EPG in which said program guide data and said statistical data are superimposed as a two-dimensional grid guide format, displaying the statistical data in superimposed fashion relative to individual programs within the grid guide format of the EPG.

Goldman is identified by the Office as satisfying all of the features of the claims with the exception of superimposing statistical data together with program guide data in accordance with the Applicants claims. Instead, the Office has cited Ellis as describing this more detailed aspect of the Applicants claims.

Ellis describes a television program guide system in which ratings information regarding a user's viewing rate relative to ranked programs which are arranged one-dimensionally. As shown in Figures 20A-B and as described at least at paragraph 112 of Ellis, when a program of a program guide is deemed to meet specific conditions, a separate window is generated, apart from any program guide which includes viewer recommendation. As can be appreciated, this recommendation, to the extent it is considered equivalent to the Applicants statistical data, is clearly generated independent of any program guide.

As Goldman is not relied upon for this feature, and Ellis clearly does not disclose or suggest a EPG in which program guide data and statistical data are superimposed as a two-dimensional group guide format, displaying the statistical data in superimposed fashion relative to individual programs within the grid guide format of the EPG.

Accordingly, Applicants respectfully request that the rejection of Claims 1-24 under 35 U.S.C. § 103 be withdrawn.

Conclusion

Consequently, in view of the foregoing amendment and remarks, Applicants respectfully submit that the present application, is in condition for allowance, and such action is respectfully requested at an early date.

Respectfully submitted,

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